

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter

Petition for Waiver of the Commission's  
Price Cap Rules for Services Transferred  
From VADI to the Telephone Companies

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WC Docket No. 07-31  
DA 07-799

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**COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL**

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On the Comments  
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March 13, 2007

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**I. INTRODUCTION**

The New Jersey Division the Rate Counsel ("Rate Counsel")<sup>1</sup> hereby files comments in response to the Public Notice issued on February 21, 2007 concerning the seventh request

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<sup>1</sup> / Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now Rate Counsel. The office of Rate Counsel is a Division within the New Jersey Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jersey citizens who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Whitman's Reorganization Plan. See New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq. The mission of the Ratepayer Advocate was to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that were just and nondiscriminatory. In addition, the Ratepayer Advocate worked to insure that all consumers were knowledgeable about the choices they had in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. §§ 52:27EE-1 et seq.). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," N.J.S.A. § 52: 27EE-57, i.e., an "interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A. § 52:27EE-12; The Division of Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers in utility matters. The Division of Rate Counsel represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates in Federal and state administrative and judicial proceedings.

for waiver by the Verizon Group of Companies for a waiver of Section 61.42(g) of the Federal Communications Commission's ("Commission's") rules.<sup>2</sup>

For the reasons discussed below, Essentially, Verizon continues to argue that continuation of the waiver is in the public interest given the unsettled questions concerning whether broadband services offered by incumbent local exchange carriers should be considered "dominant" with respect to broadband telecommunications services.<sup>3</sup> In addition, Verizon continues to seek a waiver with respect to certain VADI services that transmit at less than 200 kbps.<sup>4</sup>

## **II. BACKGROUND**

On November 30, 2001, Verizon filed a petition for waiver of: (a) Section 61.42(g), in order to exclude its advanced services from price cap baskets; and (b) Section 61.38, so that it may file tariff modifications without cost support; and (c) Section 61.49, so that it may file tariff transmittals without certain supporting information. On September 26, 2001, the Commission granted Verizon's request to re-integrate, on an accelerated basis, Verizon Advanced Data Inc.'s ("VADI") advanced services assets into the Verizon Telephone Companies.<sup>5</sup> The Commission subsequently initiated a rulemaking to consider whether incumbent local exchange carriers should be

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<sup>2</sup> / See 47 C.F.R. § 61.42(g).

<sup>3</sup> / See Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, FCC01-30, 16 FCC Rcd 22745 (2001), CC Docket No. 01-337.

<sup>4</sup> / Petition at 2.

<sup>5</sup> / *Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Order, DA 01-2203 (rel. Sept. 26, 2001).

treated as non-dominant in the provision of advanced services.<sup>6</sup> Subsequently, since 2001, Verizon has filed on an annual basis for the past six years a Petition to Extend Waiver of Section 61.42(g) of the Commission's Price Cap Rules for services transferred from VADI to the Verizon telephone companies. In the interim and to date the Bureau has granted Verizon a total of 6 waivers over the past six years,<sup>7</sup> simply on the premise that because a proceeding to determine such regulatory treatment remains pending, this waiver remains in the public best interest. Rate Counsel has pending before the Commission, an Application for Review, regarding the "2006 VADI Waiver Order.

### **III. THE COMMISSION SHOULD DENY THE PETITION AND DIRECT VERIZON TO FILE ALL ANNUAL ACCESS TARIFF FILINGS.**

As a result of the pending Application for Review filed by Rate Counsel on July 6, 2006 and the issues raised therein, Rate Counsel submits that a decision on this current waiver must be made the Federal Communications Commission and may not be made by the Wireline Competition Bureau. In that regard, Rate Counsel incorporates by reference all the arguments raised in its Application for Review and in its Reply filed in 2006 and such arguments support denial of the pending waiver. Rate Counsel also submits that the request for relief for VADI services that transmit at rates below 200 kbps requires a rulemaking and

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<sup>6</sup> / *FCC Initiates Proceeding to Examine Regulatory Treatment of Incumbent Carriers' Broadband Services*, Public Notice (Dec. 12, 2001). *See also, Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rulemaking, 17FCC Rcd 3019 (2002) ("Broadband Dom/Non-Dom NPRM").

<sup>7</sup> / *See Verizon Petition for Interim Waiver of Sections 61.42(g), 61.38, and 61.49 of the Commission's Rules*, Order, 17 FCC Rcd 11010 (2002) ("Sections 61.42(g), 61.38, 61.49 Waiver Petitions"); *Verizon Petition for Interim Waiver of Section 61.42(g) of the Commission's Rules*, Order 18 FCC Rcd 6498 (2003) ("Verizon Section 61.42(g) Waiver Petition"); *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon telephone Companies*, Order 18FCC Rcd 7095 (2004) ("2004 VADI Waiver Order"); *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, Order, 20 FCC Rcd 8900 (2005) ("2005 VADI Waiver Order"); "; *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, Order, 21 FCC Rcd 6470 (2006) ("2006 VADI Waiver Order").

may not be done through a waiver. Rate Counsel also submits that Verizon has failed to justify, demonstrate and show good cause for the continuation of the waiver. Other carriers have filed and continued to file annual access tariff filings with the Commission without requesting a waiver. The delay by the Commission in resolving and deciding issues which have been pending before it for over six years is no justification for treating Verizon differently from all other price cap carriers. In addition, Rate Counsel notes that Verizon wants this further waiver in order to complete the transition of its VADI broadband services which will not be complete as of the time for filing its 2007 tariff filing.<sup>8</sup>

Rate Counsel submits that public policy considerations favor the denial of the petition. There has been a separation freeze in place for five years. The Federal/state jurisdictional separations process (“separation process”) remains frozen in time. This freeze directly affects and distorts the rate cap regime. Until the Commission updates and revises the separations process, rate caps at the federal and state level cannot be considered just and reasonable. With the numerous and major changes in the telecommunications market (such as the granting of Section 271 authority, the classification of digital subscriber line (“DSL”) and cable modem as informational services, the classification of VoIP as an interstate service, pending proposals to revise intercarrier compensation, and proposed universal service reform), the continuation of the waiver(s) merely continues the fundamental unfairness in not revising rate caps to account for such changes and requiring compliance with regulatory requirements. As a result, Verizon’s advance services should no longer be excluded from annual access tariff filings.

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<sup>8</sup> / Petition at 5. Rate Counsel notes that various parties, including Rate Counsel have appealed the “Deemed Grant” of forbearance relied upon by Verizon in this filing (Petition at 2-8). Such appeal is pending before the United States Court of Appeals for the District of Columbia Circuit, Case No. 06-1111 (Consolidated with case Nos. 06-113, 06-115, 06-1167, 06-1200).

#### IV. CONCLUSION

In view of the foregoing, Rate Counsel respectfully asks that the Commission deny the waiver and direct Verizon to include advance services in its FCC Tariff No. 20 filings for 2007.

Very truly yours,

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Dated: March 13, 2007